

**STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the Matter of:

Kevin T. Donnellan
System ID No. 0063497

Enforcement Case No. 11-11169

Respondent.

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Issued and entered
on May 23, 2011
by **Annette E. Flood**
Chief Deputy Commissioner

CONSENT ORDER AND STIPULATION

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times pertinent to the matters herein, Kevin T. Donnellan (Respondent) was a licensed resident producer in the State of Michigan with qualifications in Casualty, Multiple Lines P&C and Property.
2. Respondent knew, or had reason to know Section 1207 of the Michigan Insurance Code, MCL 500.1207, states in part:

(1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.

(2) An agent shall use reasonable accounting methods to record funds received in his or her fiduciary capacity including the receipt and distribution of all premiums due each of his or her insurers. An agent shall record return premiums received by or credited to him or her which are due an insured on policies reduced or canceled or which are due a prospective purchaser of insurance as a result of a rejected or declined application. Records required by this section shall be open to examination by the commissioner.

3. Respondent knew, or had reason to know Section 1239 of the Michigan Insurance Code, MCL 500.1239 states in part:

In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

COUNT I

4. On or about July 3, 2009, Respondent quoted to a client a rate of \$1,194.00 for a 6 month no-fault automobile insurance policy from Great Lakes Casualty Insurance Company (Great Lakes). The client provided payment for the \$1,194 quote by payment of \$800.00 in cash and a check for the remaining \$394.00, all of which was deposited in the Respondents' accounts.
5. Respondent soon thereafter became aware the actual premium requirement was \$1,495.00 with a full payment discount rate of \$1,308.00, meaning Respondent had misquoted the premium rate to his client by an amount of \$114.00 for full payment.
6. On August 17, 2009, upon receipt of a payment from Respondent on the policy for \$405.30, Great Lakes initiated coverage for the client for the period of July 3, 2009 through January 3, 2010.
7. On August 17, 2009, in response to the partial payment, Great Lakes issued an installment bill in the amount of \$1,095.70, requiring a payment of \$572.45 by September 6, 2009.
8. On August 25, 2009 Great Lakes issued a Pre-cancel notice to the insured.
9. On August 31, 2009, the client contacted Great Lakes inquiring as to why she received a pre-cancel notice when she paid the agency in full.
10. Great Lakes contacted Respondent who indicated he forgot to upload the payment. On September 1, 2009, Respondent uploaded an additional \$1,095.70.

11. Respondent made an installment payment instead of payment in full as he was attempting to find a policy which would meet the initial premium price misquote given to the client.
12. Respondent ultimately paid the difference between the misquote and actual quote.
13. By making only a partial payment of the premium even though the client paid the full quoted amount of the premium and failing to inform the client of the misquote in premium, Respondent violated his fiduciary requirements under Section 1207 of the Code, MCL 500.1207 and improperly withheld, misappropriated, or converted money received in the course of doing insurance business in violation of Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in Michigan in violation of Section 1239(1)(h) of the Code, MCL 500.1239(1)(h).

COUNT II

14. On March 25, 2010, Respondent received and deposited in the Donnellan Partrick Insurance Escrow Account a check made out to Donnelan Ins. (sic) for \$427.20 from clients as an initial installment payment on the purchase of a No-fault automobile insurance policy from Pioneer State Mutual Insurance Company (Pioneer). The policy was quoted at \$1,274 for six months.
15. Assuming there would be no issue with the issuance of the policy, Respondent prematurely issued a certificate of no-fault insurance naming Pioneer as the insurance company after electronically filing an application for pre-approval. The certificate contained no policy number.
16. After the client departed the Respondent's office, Respondent discovered that, due to a lapse in coverage, client would not qualify for an installment billing plan.
17. Respondent did not obtain coverage for the client, nor did he timely contact the client and inform them of the issues interfering with their obtaining coverage.
18. On November 19, 2010, Respondent refunded the \$427.20 to the client.
19. By accepting funds from his client to purchase a No-fault automobile insurance policy from Pioneer, failing to obtain that policy, failing to timely notify the client of the issues interfering with the issuance of a policy and failing to timely return funds to the client, Respondent violated his fiduciary requirements under Section 1207 of the Code, MCL 500.1207 and improperly withheld, misappropriated, or converted money received in the course of doing insurance business in violation of Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in Michigan in violation of Section 1239(1)(h) of the Code, MCL 500.1239(1)(h).

COUNT III

20. On July 14, 2010, a client of Respondent provided a check for \$484.50 made out to Hastings Mutual Insurance Company (Hastings) as an installment payment for the renewal of his no-fault automobile insurance policy. Respondent issued a receipt for the check on July 20, 2010 and the check was deposited in the Donnellan Partrick Insurance Escrow Account on July 22, 2010.
21. On July 20, 2010, Hastings received \$484.50 from Respondent as payment towards the premium owed for the client's insurance.
22. On August 13, 2010, Respondent issued a receipt for and deposited a check for \$331.00, issued to Hastings, from the client for an installment payment of premium for the client's no-fault automobile insurance policy due August 14, 2010.
23. Hastings did not receive the August 14, 2010 payment.
24. On August 23, 2010, a notice of cancellation was issued to the insured and the cancellation took effect on September 7, 2010.
25. Respondent attempted and failed to use the \$331.00 payment for a new policy with a less expensive premium for the client.
26. On February 3, 2011, Respondent refunded \$815.50.
27. By not remitting payment of the premium in the amount of \$331.00 which was received on August 13, 2010, Respondent violated his fiduciary requirements under Section 1207 of the Code, MCL 500.1207 and improperly withheld, misappropriated, or converted money received in the course of doing insurance business in violation of Section 1239(1)(d) of the Code, MCL 500.1239(1)(d), and demonstrated incompetence, untrustworthiness, and financial irresponsibility in the conduct of business in Michigan in violation of Section 1239(1)(h) of the Code, MCL 500.1239(1)(h).

COUNT IV

28. Respondent knew, or had reason to know Section 1211a of the Michigan Insurance Code, MCL 500.1211a states, "An insurance producer doing business under any name other than the producer's legal name shall notify the commissioner prior to using the assumed name."
29. On January 11, 2011, Respondent was contacted by OFIR requesting information on the organization of Donnellan Partrick Insurance Agency. Respondent informed OFIR the status of Donnellan Partrick Insurance Agency is a dba.
30. OFIR records indicate Respondent has not notified OFIR of its usage of the DBA.

31. By not informing OFIR of the usage of the DBA, Respondent violated Section 1211a of the Code, MCL 500.1211a which requires an insurance producer doing business under any name other than the producer's legal name to notify the commissioner prior to using the assumed name.

II. ORDER

Based upon the parties stipulation to the Findings of Fact and Conclusions of Law above, the Commissioner **ORDERS** the following:

- A. Respondent shall file as soon as practical a Form FIS 0201 dba Registration formally notifying OFIR of the dba Donnellan Partrick Insurance Company under the license of Patrick Donnellan.
- B. Respondent shall establish written record keeping and accounting methods to ensure that all funds received from clients are properly remitted to insurers in a timely manner.
- C. Respondent shall reconcile the Donnellan Partrick Insurance Escrow Account and all other accounts of the business not less than once a month.
- D. Respondent shall pay to the State of Michigan, through OFIR, a civil fine of \$1,200 within 30 days of the invoice date as indicated on the OFIR invoice.

OFFICE OF FINANCIAL AND INSURANCE REGULATION


Annette E. Flood

Chief Deputy Commissioner

III. STIPULATION

Respondent has read and understands the Consent Order above. Respondent agrees that the Chief Deputy Commissioner has jurisdiction and authority to issue this Consent Order pursuant to the Code and that both parties have complied with the all procedural requirements of the APA and the Code. Respondent waives the right to a hearing in this matter if this Consent Order is issued. Respondent understands that this stipulation and Consent Order will be presented to the Chief Deputy Commissioner for approval and the Chief Deputy Commissioner may or may not issue this Consent Order. Respondent waives all objections to the Commissioner deciding this case following a hearing in the event the Consent Order is not approved. Respondent admits the facts set forth in the above Consent Order and agree to the entry of this order.

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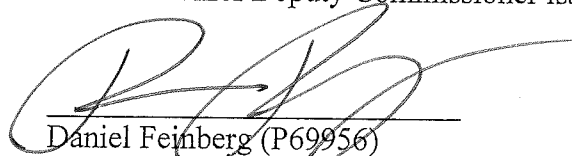


Kevin T. Donnellan
System ID No. 0063497

05-13-11

Date

OFIR staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above Consent Order.



Daniel Feinberg (P69956)
Attorney

5/23/11

Date